

amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[72 FR 25705, May 7, 2007]

EFFECTIVE DATE NOTE: At 73 FR 67109, Nov. 13, 2008, paragraph (d)(3) of § 49.23 was stayed until further notice.

**§ 49.24 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.**

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, equipment associated with coal and ash handling, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) on the Navajo Nation located in the Northern Arizona Intrastate Air Quality Control Region (*see* 40 CFR 81.270).

(b) *Compliance dates.* Compliance with the requirements of this section is required upon the effective date of this section.

(c) *Definitions.* For the purposes of this section:

(1) *Absorber upset transition period* means the 24-hour period following an upset of an SO<sub>2</sub> absorber module which resulted in the absorber being taken out of service.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution

control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises the NGS, any of the fossil fuel-fired, steam-generating equipment at the NGS, or the auxiliary steam boilers at the NGS.

(5) *Plant-wide* means a weighted average of particulate matter and SO<sub>2</sub> emissions for Units 1, 2, and 3 based on the heat input to each unit as determined by 40 CFR part 75.

(6) *Point source* means any crusher, any conveyor belt transfer point, any pneumatic material transferring, any baghouse or other control devices used to capture dust emissions from loading and unloading, and any other stationary point of dust that may be observed in conformance with Method 9 of Appendix A-4 of 40 CFR Part 60 (excluding stockpiles).

(7) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency Region 9 or his/her authorized representative.

(8) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit and when a unit reaches 300 MW net load. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during startup episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(9) *Shutdown* shall begin when the unit drops below 300 MW net load with the intent to remove the unit from service. The precipitator shall be maintained in service until boiler fans are disengaged. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during shutdown episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(10) *Oxides of nitrogen (NO<sub>x</sub>)* means the sum of nitrogen oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) in the flue gas, expressed as nitrogen dioxide.

(d) *Emissions limitations and control measures*—(1) *Sulfur oxides*. No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2, or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate matter*. No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu, on a plant-wide basis, as averaged from at least three sampling runs per stack, each at a minimum of 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust*. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station, as determined using 40 CFR Part 60, Appendix A–4 Method 9.

(4) *Opacity*. No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than 20% opacity, excluding condensed uncombined water droplets, averaged over any six (6) minute period and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods.

(e) *Testing and monitoring*. (1) On and after the effective date of this regulation, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO<sub>x</sub> and SO<sub>2</sub> and Continuous Opacity Monitoring Systems (COMS) on Units 1, 2, and 3 in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR Part 60, Appendix A.

(3) During any calendar year in which an auxiliary boiler is operated for 720 hours or more, and at other times as requested by the Administrator, the owner or operator shall conduct mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR Part 60, Appendix A. For particulate matter, testing shall consist of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this

section shall be conducted in accordance with the appropriate method found in 40 CFR Part 60, Appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR Part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be reported annually to the Regional Administrator. All particulate matter samplers shall operate at least once every six days, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(8) A certified EPA Reference Method 9 of Appendix A-4 of 40 CFR Part 60 observer shall conduct a weekly visible emission observation for the equipment and activities described under Section 49.24(d)(3). If visible emissions are present at any of the equipment and/or activities, a 6-minute EPA Reference Method 9 observation shall be conducted. The name of the observer, date, and time of observation, results of the observations, and any corrective actions taken shall be noted in a log.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to

the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Regional Administrator and postmarked within 60 days of testing.

(2) For excess emissions, notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency Region 9, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: [r9.aeo@epa.gov](mailto:r9.aeo@epa.gov). A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Regional Administrator verbally within one business day of determination that an exceedance of

the NAAQS has been measured by a monitor operated in accordance with this regulation. The notification to the Regional Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. Compliance with this paragraph (f)(3)(v) shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

- (i) The time, date, and location of the exceedance;
- (ii) The pollutant and concentration of the exceedance;
- (iii) The meteorological conditions existing 24 hours prior to and during the exceedance;
- (iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance; and
- (v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Cylinder Gas Audit. Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance; however, the length of time during which water vapor interfered with COMs readings should be summarized in the 40 CFR 60.7 (c) report.

(g) *Compliance certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the

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process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[75 FR 10179, Mar. 5, 2010]

§§ 49.25–49.50 [Reserved]

### Subpart B—General Provisions

§§ 49.51–49.100 [Reserved]

### Subpart C—General Federal Implementation Plan Provisions

SOURCE: 70 FR 18095, Apr. 8, 2005, unless otherwise noted.

§§ 49.101–49.120 [Reserved]

GENERAL RULES FOR APPLICATION TO INDIAN RESERVATIONS IN EPA REGION 10

#### § 49.121 Introduction.

(a) *What is the purpose of the “General Rules for Application to Indian Reservations in EPA Region 10”?* These “General Rules for Application to Indian Reservations in EPA Region 10” establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these “General Rules for Application to Indian Reservations in EPA Region 10” developed?* These “General Rules for Application to Indian Reservations in EPA Region 10” were developed in consultation with the Indian Tribes located in Idaho, Oregon, and Washington and with input from the public and State and local governments in Region 10. These general rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these “General Rules for Application to Indian Reservations in EPA Region 10” applicable to sources on a particular Indian reservation?* These “General Rules for Application to Indian Reservations in EPA Region 10” apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules for that reservation. Rules will be promulgated through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this part. These “General Rules for Application to Indian Reservations in EPA Region 10” apply only to air pollution sources located within the exterior boundaries of an Indian reservation or other reservation lands specified in subpart M of this part.

#### § 49.122 Partial delegation of administrative authority to a Tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to an Indian Tribe partial authority to administer one or more of the Federal requirements in effect in subpart M of this part for a particular Indian reservation. The Federal requirements administered by the delegated Tribe will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.